

JOLLENTA PLUMMER, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

TMC RESTAURANT OF CHARLOTTE,
LLC dba MEN’S CLUB OF CHARLOTTE,
a North Carolina Limited Liability Company;
LLOYD J ACE, III, an individual; ABDUR
RASCHID CHAWDHARY, an individual;
DOE MANAGERS 1 through 3; and DOES 4
through 10, inclusive,

Defendants.

Case No.: 3:21-cv-00648-FDW-DSC

COLLECTIVE ACTION

**JOINT MOTION FOR APPROVAL
OF PLAINTIFF KIRSTEN
CAVANAUGH’S ACCEPTANCE OF
DEFENDANTS’ FED. R. CIV. P. 68
OFFER OF JUDGMENT**

I. INTRODUCTION

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II. RELEVANT FACTS

Plaintiff performed as an exotic dancer at TMC. Cavanaugh joined this matter on December 22, 2021. *See* Dkt. 10.

After Cavanaugh joined this matter, counsel for Defendants informally exchanged discovery comprising of all electronic records of Cavanaugh's performances at the clubs during the three years previous to her joining this matter. Based on the club's records, Cavanaugh only performed at the Club on five days: February 20, 2021, February 27, 2021, March 1, 2021, March 9, 2021, and March 31, 2021. Cavanaugh does not dispute the days or hours represented in the Club's records. *See* Declaration of Jesenia A. Martinez ("Martinez Decl.") ¶ 2, Ex. 1.

From the Club's records, which capture the dates and times Cavanaugh performed at TMC, Cavanaugh's total hours worked for Defendants was 21.82. There was no overtime. *See id.*

On July 11, 2022, Defendants served a Rule 68 Offer to Cavanaugh, which Cavanaugh timely accepted. *See* Dkt. 17.

III. ARGUMENT

Rule 68 Offers are valid, appropriate, and acceptable methods of resolving FLSA matters, such that when accepted Rule 68 Offers are made, no actual case or controversy exists from which the Court could have jurisdiction to continue adjudicating the matter.

A. Rule 68 Offers Are an Acceptable Method of Resolving FLSA Actions

Rule 68(a) provides:

At least 14 days before the date set for trial, a party defending against a claim may serve on an opposing party an offer to allow judgment on specified terms, with the costs then accrued. If, within 14 days after being served, the opposing party serves written notice accepting the offer, either party may then file the offer and notice of acceptance, plus proof of service. The clerk must then enter judgment.

Courts acknowledge that Rule 68 offers of judgment are acceptable methods of "resolving a case brought pursuant to the FLSA." *Mackenzie v. Kindred Hosps. E., L.L.C.*, 276

F.Supp.2d 1211, 1216 (M.D. Fla. 2003) (citing *Arencibia v. Miami Shoes, Inc.*, 113 F.3d 1212 (11th Cir. 1997)); *see also Mei Xing Yu v. Hasaki Restaurant, Inc.*, 944 F.3d 395, 414 (2nd Cir. 2019) (holding that “judicial approval is not required of Rule 68(a) offers of judgment settling FLSA claims.”); *Park v. Am. Servs. of Cent. Fla., Inc.*, No. 6:06-cv-882-Orl-22JGG, 2007 WL 430651, at *2 (M.D. Fla. Feb. 3, 2007) (“Where the employer offers full the plaintiff full compensation on his FLSA claim, no compromise is involved and judicial approval is not required.”).

Cavanaugh has not compromised her FLSA claims. There is no “side deal.” The terms of the Offer were provided to the Court on July 11, 2022, and those terms provide for a full and complete compensation of Cavanaugh’s claims as can be seen from the Offer of Judgment.

Cavanaugh performed at Men’s Club of Charlotte on only five (5) occasions in 2021. Cavanaugh does not dispute the club’s records, which demonstrate that she performed only 21.82 hours in total. Cavanaugh’s claims total \$316.39, taking into account \$7.25 in federal minimum wage and liquidated damages ($\$7.25$ (federal minimum wage) \times 21.82 (hours worked by Cavanaugh) \times 2 (liquidated damages) = \$316.39). Defendants offered \$6,000.00, which is a higher amount than Cavanaugh’s claims.

As such, the Offer fully compensates Plaintiff for her claims, demonstrating that Plaintiff has not “compromised” her FLSA claims. *See Vogel v. Am. Kiosk Mgmt*, 371 F.Supp.2d 122, 128 (D.Conn. 2005) (“Furthermore, if the offer of judgment sufficiently covers all damages claimed by the named plaintiff, plus costs and attorney’s fees, it may moot the plaintiff’s action, even if the plaintiff/offeree fails to accept the offer.”).

Furthermore, as can be seen, the Offer is not predicated on any waiver or release of Cavanaugh’s rights, but instead, provides full and complete relief for her.

Because the Offer provided complete relief for Cavanaugh’s claims, Cavanaugh accepted it. If she had chosen not to, her claims might have been rendered moot and this matter dismissed. Obtaining this Offer fully compensates Cavanaugh for the damages she alleges she

has suffered because of Defendants’ conduct. Thus, the Court must enter its judgment in accordance with the accepted Rule 68 Offer.

B. Since Cavanaugh Accepted Defendants’ Rule 68 Offer, No Actual Case or Controversy Exists

As detailed above, where no case or controversy remains or exists, the Court has no jurisdiction accept to instruct that judgment be entered.

Federal courts are courts of limited jurisdiction. “Article III, § 2 of the Constitution limits the jurisdiction of federal courts to ‘Cases’ and ‘Controversies,’ which restricts the authority of federal courts to resolving ‘the legal rights of litigants in actual controversies.’” *Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 71 (2013) (quoting *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 471 (1982)). The Court must maintain subject matter jurisdiction at all times, “[a] corollary to this case-or-controversy requirement is that ‘an actual controversy must be extant at all stages of review, not merely at the time the complaint is filed.’” *Genesis*, 569 U.S. at 71 (quoting *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67 (1997)).

In *Genesis*, the United States Supreme Court found that the employee’s individual and collective **claims were moot as a result of a Rule 68 offer** of judgment that offered complete relief, even though it was not accepted. *Genesis*, 569 U.S. at 73-74.

Here, Cavanaugh’s acceptance of a Rule 68 offer that completely compensates her harms, renders it so that there is no longer a justiciable claim. Cavanaugh accepted Defendants’ Rule 68 Offer, which provides a full and complete relief for her claims without a waiver or release.

All that is left is for judgment to be entered in accordance with the accepted Rule 68 Offer to resolve her claims.

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IV. CONCLUSION

Based on the foregoing, Cavanaugh respectfully requests that the Court grant this Motion and direct the Clerk to enter judgment per the accepted Rule 68 Offer of Judgment.

Dated: August 31, 2022

Respectfully submitted,

/s/ Jesenia A. Martinez

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Dated: August 31, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on Wednesday, August 31, 2022 a true and correct copy of the attached **JOINT MOTION FOR APPROVAL OF PLAINTIFF KIRSTEN CAVANAUGH'S ACCEPTANCE OF DEFENDANTS' FED. R. CIV. P. 68 OFFER OF JUDGMENT** and accompanying documents were served via CM/ECF upon the following parties pursuant to Rule 5 of the Federal Rules of Civil Procedure:

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Counsel for All Defendants

/s/ Jesenia A. Martinez

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